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THANOS TRIANT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

United States Small Business Administration
in its capacity as Receiver for Alto Tech II,
L.P.,

Plaintiff,

vs.

Alto Tech Ventures, LLC, a Delaware limited
liability company; Alto Tech Management,
LLC, a California limited liability company;
Gloria Chen Wahl, an individual; Walter T.G.
Lee, an individual, and Thanos Triant, an
individual,

Defendants.

Case No. C 07 4530 SC

**DEFENDANT THANOS TRIANT'S
ANSWER TO COMPLAINT**

ANSWER TO COMPLAINT

Defendant THANOS TRIANT (hereinafter collectively "Defendant" or "Triant") states as follows for his Answer to the Complaint and each paragraph thereto in correspondence with the numbered paragraphs below:

PARTIES

1. Defendant admits the allegations of Paragraph 1 of the Complaint except that Defendant denies that this case is related to the action captioned *United States of America v. Alto Tech II, L.P.*, case number C06-3879 EMC, pending in this Court (the "Receivership Action").

2. Defendant admits that the Receiver maintains its principal place of business in Washington, D.C.; except as admitted by the foregoing, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Complaint, and therefore denies those allegations.

3. Defendant admits the allegations in Paragraph 3 of the Complaint and admits that the Partnership Agreement is attached to the Complaint as Exhibit B; however, Defendant specifically denies that Thanos Triant is a party to the Partnership Agreement.

4. Defendant admits that Alto Tech Ventures, LLC is a Delaware limited liability company and that ATV is Alto Tech's managing general partner Alto Tech Ventures, LLC ("ATV"); however, Defendant lacks sufficient knowledge or information to form a belief as the truth of the remaining allegations set forth in Paragraph 4 of the Complaint, and therefore denies those allegations.

5. Defendant admits that Alto Tech Management, LLC ("ATM") is a California limited liability company; however, Defendant lacks sufficient knowledge or information to form a belief as the truth of the remaining allegations set forth in Paragraph 5 of the Complaint, and therefore denies those allegations.

6. Defendant lacks sufficient knowledge or information to form a belief as the truth of the allegations set forth in Paragraph 6 of the Complaint, and therefore denies those allegations.

7. Defendant lacks sufficient knowledge or information to form a belief as the truth of the remaining allegations set forth in Paragraph 7 of the Complaint, and therefore denies those allegations.

8. Defendant admits the allegations of Paragraph 8 of the Complaint.

9. Defendant denies the allegations in Paragraph 9 of the Complaint.

JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

10. The allegations of this Paragraph 10 of the Complaint are legal conclusions and for which no response is necessary or appropriate; however, notwithstanding the foregoing, Defendant denies each and every allegation of Paragraph 10 of the Complaint.

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11. Defendant admits the allegations of Paragraph 11 except that Defendant denies each and every legal conclusion set forth therein including that this action is ancillary to or otherwise related to the Receivership Action.

12. Defendant admits the allegations of Paragraph 12 of the Complaint.

COMMON ALLEGATIONS

13. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Complaint, and therefore denies those allegations.

14. The allegations of Paragraph 14 of the Complaint are in the form of legal conclusions, to which no response is required and the Act and the Regulations speak for themselves, as a matter of law; notwithstanding the foregoing, Defendant denies the allegations in Paragraph 14 of the Complaint.

15. The allegations of Paragraph 15 of the Complaint are in the form of legal conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the allegations of Paragraph 15 of the Complaint.

16. The allegations of Paragraph 16 of the Complaint are in the form of legal conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the allegations of Paragraph 16 of the Complaint.

17. The allegations of Paragraph 17 of the Complaint are in the form of legal conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the allegations of Paragraph 17 of the Complaint.

18. The allegations of Paragraph 18 of the Complaint are in the form of legal conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the allegations of Paragraph 18 of the Complaint.

19. Defendant admits the allegations of Paragraph 19 of the Complaint.

20. Defendant admits that ATV was Alto Tech's managing general partner; however, Triant denies that he was a managing member of ATV at all relevant times and otherwise denies the remaining allegations of Paragraph 20 of the Complaint.

1 21. Defendant admits that ATM acted as the Investment Advisor/Manager for Alto
2 Tech pursuant to the terms of that certain Management Services Agreement between Alto Tech and
3 ATM dated April 12, 2000; however, Triant denies that he was a managing member of ATM at all
4 relevant times and otherwise denies the remaining allegations of Paragraph 21 of the Complaint.

5 22. Defendant lacks sufficient knowledge or information to form a belief as to the truth
6 of the allegations set forth in Paragraph 22 of the Complaint, and therefore denies those
7 allegations.

8 23. Defendant denies that he was a "Control Person" within the meaning of 13 CFR
9 107.50 and otherwise denies the allegations of Paragraph 23 of the Complaint.

10 24. Defendant denies the allegations of Paragraph 24 of the Complaint.

11 25. Defendant denies the allegations of Paragraph 25 of the Complaint.

12 26. The allegations of Paragraph 26 of the Complaint are in the form of legal
13 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
14 allegations of Paragraph 26 of the Complaint.

15 27. The allegations of Paragraph 27 of the Complaint are in the form of legal
16 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
17 allegations of Paragraph 27 of the Complaint.

18 28. The allegations of Paragraph 28 of the Complaint are in the form of legal
19 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
20 allegations of Paragraph 28 of the Complaint.

21 29. The allegations of Paragraph 29 of the Complaint are in the form of legal
22 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
23 allegations of Paragraph 29 of the Complaint.

24 30. The allegations of Paragraph 30 of the Complaint are in the form of legal
25 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
26 allegations of Paragraph 30 of the Complaint.

27 31. Defendant denies the allegations of Paragraph 31 of the Complaint.

28 32. Defendant denies the allegations in Paragraph 32 of the Complaint.

1 33. Defendant denies the allegations in Paragraph 33 of the Complaint.

2 34. Defendant denies the allegations in Paragraph 34 of the Complaint.

3 35. Defendant admits that Alto Tech filed suit in the United States District Court for the
4 Northern District of California against Optiva and certain other defendants and that the Optiva
5 Complaint speaks for itself; except as admitted by the foregoing, Defendant denies the remaining
6 allegations in Paragraph 35 of the Complaint.

7 36. Defendant denies that the Optiva Complaint contained admissions as to Defendant
8 Triant as he was not a party to that lawsuit and Defendant otherwise denies the remaining
9 allegations of Paragraph 36 of the Complaint.

10 37. Defendant lacks sufficient knowledge or information to form a belief as to the truth
11 of the allegations set forth in Paragraph 37 of the Complaint, and therefore denies those
12 allegations.

13 38. Defendant lacks sufficient knowledge or information to form a belief as to the truth
14 of the allegations set forth in Paragraph 38 of the Complaint, and therefore denies those
15 allegations.

16 39. The allegations of Paragraph 39 of the Complaint are in the form of legal
17 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
18 allegations of Paragraph 39 of the Complaint.

19 40. Defendant denies the allegations of Paragraph 40 of the Complaint.

20 41. Defendant lacks sufficient knowledge or information to form a belief as to the truth
21 of the allegations set forth in Paragraph 41 of the Complaint, and therefore denies those
22 allegations.

23 **COUNT I**

24 **BREACH OF FIDUCIARY DUTY AGAINST ATV, ATM, WAHL, LEE AND TRIANT**

25 42. Defendant incorporates by reference his responses to the allegations in Paragraphs 1
26 through 41, inclusive; by such reference hereby incorporates them as though set forth herein at
27 length.

28 43. Defendant denies the allegations of Paragraph 43 of the Complaint.

1 44. Defendant denies the allegations of Paragraph 44 of the Complaint.

2 45. Defendant denies the allegations of Paragraph 45 of the Complaint.

3 46. The allegations of Paragraph 46 of the Complaint are in the form of legal
4 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
5 allegations of Paragraph 46 of the Complaint.

6 47. The allegations of Paragraph 47 of the Complaint are in the form of legal
7 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
8 allegations of Paragraph 47 of the Complaint.

9 48. Defendant denies the allegations of Paragraph 48 of the Complaint.

10 49. Defendant denies the allegations of Paragraph 49 of the Complaint.

11 **COUNT II**

12 **NEGLIGENCE AGAINST ATV, ATM, WAHL, LEE AND TRIANT**

13 50. Defendant incorporates by reference his responses to the allegations in Paragraphs 1
14 through 49, inclusive; by such reference hereby incorporates them as though set forth herein at
15 length.

16 51. Defendant denies the allegations of Paragraph 51 of the Complaint.

17 52. Defendant denies the allegations in Paragraph 52 of the Complaint.

18 53. The allegations of Paragraph 53 of the Complaint are in the form of legal
19 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
20 allegations of Paragraph 53 of the Complaint.

21 54. The allegations of Paragraph 54 of the Complaint are in the form of legal
22 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
23 allegations of Paragraph 54 of the Complaint.

24 55. Defendant denies the allegations of Paragraph 55 of the Complaint.

25 56. Defendant denies the allegations of Paragraph 56 of the Complaint.

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COUNT III

BREACH OF THE PARTNERSHIP AGREEMENT AGAINST

ATV, WAHL, LEE AND TRIANT

57. Defendant incorporates by reference his responses to the allegations in Paragraphs 1 through 56, inclusive; by such reference hereby incorporates them as though set forth herein at length.

58. Defendant admits the allegations of Paragraph 58 of the Complaint.

59. Defendant denies the allegations of Paragraph 59 of the Complaint.

60. The allegations of Paragraph 60 of the Complaint are in the form of legal conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the allegations of Paragraph 60 of the Complaint.

61. Defendant denies the allegations of Paragraph 61 of the Complaint.

62. Defendant denies the allegations of Paragraph 62 of the Complaint.

63. Defendant denies the allegations of Paragraph 63 of the Complaint.

64. Defendant denies the allegations of Paragraph 64 of the Complaint.

65. Defendant denies the allegations of Paragraph 65 of the Complaint.

COUNT IV

BREACH OF THE MANAGMENT AGREEMENT AGAINST

ATV, WAHL, LEE AND TRIANT

66. Defendant incorporates by reference his responses to the allegations in Paragraphs 1 through 65, inclusive; by such reference hereby incorporates them as though set forth herein at length.

67. Defendant denies the allegations of Paragraph 67 of the Complaint.

68. Defendant denies the allegations of Paragraph 68 of the Complaint.

69. The allegations of Paragraph 69 of the Complaint are in the form of legal conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the allegations of Paragraph 69 of the Complaint.

70. Defendant denies the allegations of Paragraph 70 of the Complaint.

1 71. The allegations of Paragraph 71 of the Complaint are in the form of legal
2 conclusions, to which no response is required; notwithstanding the foregoing, Defendant denies the
3 allegations of Paragraph 71 of the Complaint.

4 72. Defendant denies the allegations of Paragraph 72 of the Complaint.

5 73. Defendant denies the allegations of Paragraph 73 of the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

8 Plaintiff has failed to state a claim upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 This court lacks subject matter jurisdiction of Plaintiff's claims.

11 **THIRD AFFIRMATIVE DEFENSE**

12 Plaintiff's claims are barred by the applicable statute of limitations.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred in whole or in part by the doctrine of laches.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims fail because Defendant's actions were not the proximate cause of any loss
21 suffered by Plaintiff.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 Plaintiff's contract claims against Defendant are barred because Defendant is not a party to
24 the Partnership Agreement or the Management Services Agreement and because Defendant
25 discontinued with and was separated as a member from the partnership and the management
26 company.

27 **NINTH AFFIRMATIVE DEFENSE**

28 Plaintiff's tort claims are barred by the economic loss doctrine.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims against this Defendant are barred because this Defendant committed no act or omission in violation of any right of Plaintiff and this Defendant discontinued with and was separated as a member from the partnership and the management company.

PRAYER FOR DISMISSAL AND RELIEF

WHEREFORE, Defendant Thanos Triant requests and otherwise prays:

1. That Plaintiff take nothing by this Complaint;
2. For judgment and dismissal of all claims, with prejudice;
3. For Defendant's costs and disbursements incurred herein; and
4. For such other and further relief as this Court may deem proper.

Respectfully submitted,

Dated: November 5, 2007

RUSSO & HALE LLP

By: /s/ Jack Russo
Jack Russo, Attorney for Defendant Triant